

CENTRAL ARBITRATION COMMITTEE

Annual Report
2022/23





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This report of the activities of the Central Arbitration Committee (CAC) for the period 1 April 2022 to 31 March 2023 was sent by the Chair of the CAC to the Chair of Acas on 26 June 2023, and was submitted to the Secretary of State for the Department for Business and Trade on 27 June 2023.

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Chair's Review of the Year



For the first time in over a decade, there appeared to be the possibility that the CAC was going to have its jurisdictions extended with the introduction of new legislation. This did not materialise, but it was good to know that the CAC is on the radar of legislation makers when considering a statutory body with the expertise to adjudicate on industrial relation matters. I will speak upon this later in my review but will now turn to the caseload for the year.

Even though there has been much turmoil in the work environment with the industrial action that has been taking place in a number of sectors, the CAC has seen an upturn in its caseload compared to last year. The applications for trade union recognition rose from 46 to 53. All applications received were made under Part I of Schedule A1 to the 1992 Act. As in the previous year, no applications were made under Part II to Part VI. Including the applications made under the other CAC jurisdictions, this figure rises to 86 in comparison to 2021-22 where 57 were received in total. Across all jurisdictions, 83 cases were concluded or withdrawn whereas the total for the previous year was 61.

The initial stage in the statutory process for trade union recognition is to determine whether an application is accepted. In simple terms, this is whether an application can proceed for further consideration. Generally, most of the applications received by the CAC are accepted and there has been no departure from this for this reporting period. The following stage, in the absence of any agreement between the parties as to the appropriate bargaining unit, is that the panel will be required to determine the matter. It should be noted that the CAC does not need to arrive at a decision in every case. This is due to parties reaching an agreement between

themselves. For this year the CAC decided the appropriate bargaining unit in six cases, which is slightly less than last year's figure of nine. In the next stage following the agreement or the determination of the bargaining unit, a union can ask that the CAC awards it recognition without a ballot. This can be requested by a union if it has majority membership within the agreed or determined bargaining unit. If recognition is awarded there is no requirement to hold a secret ballot. There were 16 awards of recognition without a ballot being held, which is more than double compared to the seven awarded last year. The number of ballots taking place has halved compared to last year's figure. This year five ballots took place whereas there were eleven in the previous year. The concluding stage in the statutory process is for the parties to reach an agreement on the method of collective bargaining. This is the mechanism that sets out how collective bargaining will operate. If at this stage no agreement can be reached, the CAC can be asked to determine the method. There were more requests for our assistance this year than last with the CAC deciding the method of collective bargaining in four cases compared to one last year.

An underlying principle of the legislation is the parties are given the opportunity to reach their own agreements throughout the statutory process. The CAC continues

to encourage this. I am pleased to report that 10 voluntary agreements for recognition were reached this year following an application being submitted. This is not taking into consideration the number of times that the parties were able to reach agreements on particular matters during the statutory process itself either with the assistance of our Acas colleagues or by themselves.

The number of complaints under the Disclosure of Information provisions rose considerably from last year's eight to 30 this year. This was due to one union which was involved in industrial action submitting 24 complaints, although 10 of these were withdrawn shortly after being submitted. Even though the CAC was not required to make a decision on these complaints, I believe that the agreement eventually reached between the parties was achieved due to the influence of the CAC during this process. From the 28 cases under this jurisdiction which were closed in this period, panels were called upon to make determinations on only the one occasion. In the majority of the cases, often with the assistance of the CAC Panel Chair on an informal basis, the parties were able to resolve their issues through negotiations. The number of cases received under the Transnational Information and Consultation Regulations 1999 remained the same as in the previous year, with three complaints being received. Finally, as in the previous two years, no applications or complaints were received in respect of the Information and Consultations Regulations.

Judicial Reviews and Appeals

I reported on several appeals in my last review and I have provided an update on these.

In the matter of *TUR1/985/2016 IWGB & Rooffoods Ltd*, the union appealed directly to the Supreme Court on 20th July 2021 having had its appeal in the Court of Appeal dismissed and permission to appeal to the Supreme Court denied. Leave to appeal was duly granted by the Supreme Court and, at the time of writing, the appeal is listed to be heard on the 25th and 26th of April 2023, with the judgment to follow.

Concerning the appeal at the EAT in the case of *EWC/32(2020) Adecco Group*, this was heard on 24th and 25th November 2022. The employer's appeal on the CAC's interpretation of 'transnational matters' was dismissed as was the EWC's cross-appeal. The employer was, however, given leave to appeal to the Court of Appeal. The EWC's application for a penalty notice was granted and a penalty notice totalling £25,000 was imposed upon the employer.

The appeal to the EAT brought by the employer in the case of *EWC/36(2021) easyJet* on a number of grounds, one being that the CAC did not have the jurisdiction to hear the EWC's complaint, was dismissed. The judgment was handed down on 4th November 2022. The employer sought permission to appeal this outcome to the Court of Appeal, but this was denied. The employer has applied directly to the Court of Appeal for leave to appeal but there has been no decision from a judge as yet on this matter.

I reported previously in the case *EWC/38/2021 HSBC Continental Europe* that the EWC had appealed to the EAT in respect of the employer relocating its Central Management representative from the UK to Ireland post-Brexit and the EWC now coming under Irish Law. In a further appeal, the EWC argued that the CAC should have decided

whether it had jurisdiction under the amended Transnational Information and Consultation Regulations amongst other matters. At present, there is no news as to when these appeals will be heard.

The final case is that of *EWC/41/2022 2 Sisters Food Group* where the employer appealed to the EAT on 7th March 2023 from the CAC's decision dated 25th January 2023 following a complaint submitted to the CAC on 4th October 2022. This is in respect of a complaint of a failure to establish an EWC following an initial request made on 27th July 2015. The employer is arguing that it did not refuse to engage in negotiations even though an EWC was not established within the six-month period following the request, in accordance with Ticer Regulation 18. It is also arguing that the CAC failed to consider the union's inaction to progress matters. The employer has requested that this appeal is stayed pending the outcome of the *EWC/36(2021) easyJet* appeal currently before the Court of Appeal.

Minimum Service Levels Bill

As I mentioned in the opening comments of this report it appeared that the CAC was going to be given new legislation to adjudicate on. This was a draft bill proposed by the Department for Transport on the minimum service required when industrial action is taken by a union against an employer. This was the Transport Strikes (Minimum Service Levels) Bill which, as its title suggests, would be limited to industrial action within the transport sector. This legislation has since been replaced with the Strikes (Minimum Service Levels) Bill with a wider scope and where the Secretary of State for the relevant sector taking industrial action has the power

to make regulations, after consultation and debates in both houses of parliament, which set out the level of service required rather than it being subject to adjudication by an independent body. This bill is currently going through parliament, at the time of writing this.

The Committee and Secretariat

I bring the sad news of one Committee Member whose appointment came to an end on 31st March 2023. This was Deputy Chair, Professor Gillian Morris. Professor Morris had been a Committee Member since the CAC's inception in its current form in 2000. She was the longest-serving Committee Member, the last in fact of the original Deputy Chair appointments. Professor Morris used her unquestionable vast knowledge, experience, and expertise to determine extremely complex issues during her time with the CAC. She was very well respected and was held in high esteem by all. I can safely say that I, my fellow Committee Members, and the CAC Secretariat will greatly miss her.



Gill Morris
Deputy Chair

The CAC Secretariat welcomed a new member to the team. This was Caroline Griffiths who has joined the team as an Apprentice Content Creator. This is a new role as the CAC develops its presence on social media platforms. Caroline has made a great start and I look forward to how she extends the CAC's reach on these platforms. I would also like to congratulate Kate Norgate on her appointment to the Operations Manager role on temporary promotion. She is covering for Bola Olayinka as she goes on maternity leave.

Our stakeholders

I am pleased that the CAC continues to have a good relationship with its stakeholders. These are amongst others, Acas, TUC, and DBT (the Department for Business and Trade formerly the Department for Business, Energy and Industrial Strategy).

Conclusion

As in previous years, I would like to place on record the high value that I have for the contribution made by the Secretariat team. I know that this is seconded by the Committee Members by the feedback I have received showing how much they appreciate the hard work and support they receive. In respect of the Committee Members, I would also like to express my gratitude to all for their professionalism. It has been another difficult year where all of you have worked hard. Without this, the CAC would not have gained the respect it has from its stakeholders and its customers. I enjoy working with you all and look forward to what the future holds for us.

Stephen Redmond
Chair



Membership of the Central Arbitration Committee at 31 March 2023



Chair

Stephen Redmond

Deputy Chairs

Naeema Choudry

Partner at Eversheds Sutherland and Fee Paid
Employment Judge

Lisa Gettins

Solicitor (England & Wales); Director, Employee Relations EMEA
– Adobe Systems Europe

Sarah Havlin

Solicitor, specialising in employment relations. Previously served
as the Northern Ireland Certification Officer (Regulator of Trade
Unions and Employer Associations)

Professor Gillian Morris

Honorary Professor, University College London in the Faculty of
Laws, Barrister, Arbitrator & Mediator

Rohan Pirani

Regional Employment Judge, Employment Tribunals (England &
Wales), South West Region

Laura Prince

Barrister at Matrix Chambers and specialist in Employment law

Stuart Robertson

Regional Employment Judge, Employment Tribunals (England &
Wales), North-East Region

Tariq Sadiq

His Honour Judge Tariq Sadiq, Civil Circuit Judge, Sheffield &
South Yorkshire Region

Members with experience as representatives of employers

David Cadger	People Director, Justice & Immigration at Serco Limited
Derek Devereux	HR Coach and Mentor, Former HR Director of Constellation Europe and Matthew Clark
Mustafa Faruqi	Head of Workplace Relations at Tesco
Richard Fulham	Employee Relations Advisor and former Head of Employee & Industrial Relations, Haleon
Kieran Grimshaw	Director of HR Business advisory and employee relations at Equinix; formerly Head of Employee Relations and European HR at easyJet
Kerry Holden	Non-Executive Director & Executive Human Resources Consultant; Member of the Armed Forces Pay Review Body
Susan Jordan	NED Former VPHR/DHL
Alastair Kelly	Assistant Chief Officer for Leicestershire Police
Martin Kirke	HR Consultant, Coach and Non-Executive Director
Rob Lummis	Chair of Trustees, Jaguar Land Rover Trustees Limited, formerly Group Employee Relations Director, Jaguar Land Rover
Sean McIlveen	Honorary Teaching Fellow, Lancaster University Management School and Managing Director at Infinite Perspective Consulting Ltd
Alistair Paton	Senior Director, Labour Relations & Change, ASDA
Roger Roberts	Employee Relations Consultant, Former Employee Relations Director, Tesco Plc
Gillian Woodcock	Director, People Development & Culture for Civils & Lintels; formerly IR Consultant, Employee Relations ASDA

Members with experience as representatives of workers

Janice Beards	Former Trade Union Officer, NUT & NAHT. Employment Tribunal employee side Non-legal Member and Social Security Tribunal Disability Qualified Member
Anna Berry	Former Trade Union Official, UNISON and NASUWT, and Non-legal Member at London East Employment Tribunal
Joanna Brown	Former Chief Executive, the Society of Chiropodists and Podiatrists and the College of Podiatry
Nicholas Childs	Senior Regional Officer for the National Education Union
Michael Clancy	General Secretary and Chief Executive of Prospect
David Coats	Director, Workmatters Consulting, Visiting Professor, Centre for Sustainable Work and Employment Futures, University of Leicester
Steve Gillan	General Secretary of Prison Officers Association; and member of the TUC General Council
Ian Hanson QPM	Retired, previously Chair of Greater Manchester Police Federation, Chair of The Police Treatment Centres & St George's Police Children's Trust
Stephanie Marston	Former Trade Union Official, Prospect and Connect
Paul Moloney	National Officer, Pharmacists Defence Association Union
Paul Morley	Regional Development Officer for the National Education Union
Paul Noon OBE	Former General Secretary, Prospect
Hannah Reed	Co-ordinator of Constitutional Affairs at Unite the Union
Matt Smith OBE DL	Former Scottish Secretary, UNISON
Claire Sullivan	Director of Employment Relation and Union Services at the Chartered Society of Physiotherapy, with a background as a physiotherapist



Chief Executive's Report



Performance

There was an increase in the number of applications submitted compared to the decrease that we have witnessed over the last two years although, as you may have noticed from previous reports, the number of applications received have always been subject to a degree of unpredictability. I am very much pleased to report that throughout this period the CAC has continued to maintain the level of service to which our customers and stakeholders have become accustomed.

The CAC continues to seek feedback from its customers as we value their opinions on the service we provided. This year we changed the way we do this by making the questionnaire accessible online to the trade unions and employers on our cases. I am pleased to announce that the CAC received a 100% level of satisfaction for the service it provided. This is great news as it demonstrates the high regard held by our customers for the professionalism of the Committee Members and the Secretariat.

For this reporting period, the average time lapsed for the completion of a trade union recognition case, calculated from the date the application is received to the date when a declaration of recognition or non-recognition is issued, was 16 weeks. This figure includes some cases which involved a ballot and these averaged 23 weeks from receipt to declaration. In cases in which the union was declared recognised without a ballot, the average lapsed time was shorter at 14 weeks, which mirrors last year's figure. Overall, the length of time taken for cases to go through the statutory process has decreased to be more in line with pre-pandemic figures.

From the beginning the Secretariat has been available to answer enquiries, whether they are received by telephone or

in writing, covering all of our jurisdictions. Up to 31 March 2023, we received 53 telephone enquiries, and, as expected, the majority related to trade union recognition. This is a significant decrease from last year's figure of 105. However, we received 154 written enquiries which is a marked increase compared to last year's figure of 136.

Development

The CAC assesses its knowledge-sharing as part of its objectives in order to improve the service provided. This has kept the CAC in good stead with its changing workforce.

The CAC's website on the [gov.uk](https://www.gov.uk) platform has not required any further developments. A question we ask in the customer survey is about the usefulness of the website. The respondents' level of satisfaction was 50% with all users reporting that they did use the site to some degree. This is a fall in this area, and it is something that we are addressing for our potential users by developing the CAC's presence on social media platforms. We have this year launched our LinkedIn page, which is in its early stages. It can be accessed on:

<https://www.linkedin.com/company/central-arbitration-committee-cac/>

More material will be added on a weekly basis to take the user through the statutory process from start to finish.

This year we have made further changes to the application and employer response forms to make them further easier to understand and complete. These changes, we hope, will save the parties time by reducing the number of applications that are rejected.

Stakeholders

The CAC has kept in touch with our major stakeholders. This has been achieved through informal contact as there have been no issues raised over the CAC's operational performance.

Public interest

The CAC openly provides information on its activities on its website which is updated regularly. Every decision made by the CAC is published within a short period after it has been issued to the parties concerned.

The CAC maintains its responsibilities under the UK GDPR (the UK General Data Protection Regulations) and the Freedom of Information Act. For this reporting period, we have received 7 requests under the Freedom of Information Act which is a significant decrease from last year's total of 21. All these were answered by Acas on our behalf and all were processed within the set timescale. No requests were received under the GDPR provisions.

Administration and accountability

CAC Costs

CAC expenditure in 2022-23 has increased mainly due to accommodation related costs. The breakdown of the CAC's caseload can be viewed in Appendix I and our expenditure in Appendix 2.

Governance

The CAC's Secretariat and other resources are provided by Acas, and the CAC complies with Acas's corporate governance requirements. The relationship with Acas is set out in a Memorandum of Understanding, which includes our relationship with DBT. We review this periodically to ensure that, as an independent body, the CAC receives suitable support. It also assures Acas and DBT that our activities and resources used are appropriate and compliant with public sector policies.

Equality

The CAC conducts its affairs fully in accordance with the principles of fair and equitable treatment for its members, staff, and users. We ensure that our policies and practices do not discriminate against any individual or group and, in particular, that we communicate information in a way that meets users' needs. As the CAC is resourced by Acas, the CAC is covered by the Acas Equality and Diversity Policy and corresponds with Acas's published equality objectives. Those documents on this are available on the Acas website (www.acas.org.uk).

Secretariat

There have been further changes this year within the Secretariat, which have been briefly touched upon in the Chair's Review of the Year. First, we have a new Content Creator role which is being filled by apprentice Caroline Griffiths. Second, Kate Norgate is currently on temporary promotion to the role of Operations Manager whilst Bola Olayinka is on maternity leave. You will have the opportunity to learn more about Caroline and Kate in their introductions later in this report.

To end my report and to sum up this year, I would say that as far as the caseload is concerned, it has seen a return to the levels expected before the pandemic took place. As in the past, I would like to express my gratitude to the Secretariat for the excellent service they provide behind the scenes to the Chair, Committee Members, and our customers. They always remain professional and committed to providing the best service. This has been clearly recognised by our customers as can be seen from the survey results mentioned earlier in the report.

Maverlie Tavares | Chief Executive





Remarks from Kate Norgate, Operations Manager



I will be covering the Operations Manager post for 12 months until my colleague returns from maternity leave. Before taking on this new role I worked as a Case Manager at the CAC, a role which I had held for 18 years. I have really enjoyed working on the case management side of the organisation, working with many different CAC Panels and guiding parties through the statutory process. In particular, I enjoyed interpreting and explaining to the parties what can, at times, appear to be quite complex legislation, putting it into layman's terms in order to help them both understand and embrace the process.

Case management has offered great flexibility that has fitted perfectly around family life. But I was also conscious that there were perhaps other skills that needed developing further when thinking about my career progression in the future. This is the reason I decided to express an interest in this temporary post when the opportunity arose.

I am only a few months into the role, and I have already learned so much about the operational side of the organisation. I am also enjoying working closely with those team members whom I previously had limited contact with on a day-to-day basis. It has been really interesting discovering more about their roles and gaining a full insight into the operational side of the organisation and what goes on behind the scenes. I am looking forward to expanding my knowledge in this new area further over the coming year.

I am grateful for all of the support that the team has shown me in teaching me about their roles and the various jobs that they perform. This will assist me greatly in the months to come. I am also appreciative that this role still offers me the important work-life balance that I have enjoyed throughout my career with the CAC.

Kate Norgate | Operations Manager



Remarks from Caroline Griffiths, Content Creator



I am proud to have recently been appointed as the CAC Content Creator Apprentice. My prior work experience ranges from construction, local authority and the customer service sectors, in addition to numerous freelance content creation projects. After months of stimulating work, I have successfully transitioned into this new position, and I look forward to what the future holds.

I value learning highly and seize opportunities to expand my knowledge – this is evident in my academic background, including a degree in creative advertising strategy – as well as my dedication to helping others.

In July 2022, when I embarked on this journey of an apprentice Content Creator at the CAC, I felt nervous. However, everyone has been supportive and accommodating to ensure I have a solid foundation for both my academic pursuits and professional life. There are many aspects of this field that are new to me, but with the encouragement of my managers and hard work, I am confident that I will succeed in becoming the content creator that the CAC needs.

My professional and educational experience provides me with various transferable skills perfect for the role. I regard the development of communication in today's tech-focused society as one of my strongest abilities.

I am thrilled to be able to interact between the CAC and its stakeholders using social media, strengthening connections through creative content.

I am optimistic about the future with the CAC leading the way. Their work has been inspiring, and I am confident that through their continued efforts, everyone will benefit from improved, fair workplace arrangements. It is an honour to be a part of this organisation.

Caroline Griffiths | Content Creator

The CAC's Caseload in 2022-23

Trade Union Recognition

The CAC received 53 applications for trade union recognition under Part I of the Schedule¹ in the year ending 31 March 2023. This is an increase compared with 46 last year and 50 two years ago. There were no applications under Parts II to VI of the Schedule. Even though the CAC has previously sought to identify reasons for the fluctuations in the volume of applications received and to see whether it was possible to uncover any trends, it remains the case that there is no discernible pattern for the variation in the trade union recognition caseload.

Having examined the size of the employer in Part I recognitions, I can report that 32% of these involved cases with employers with fewer than 200 workers. Last year this figure was 43% and 40% in 2020-21. The size of the employer ranged from 18 to 75,000 with the latter figure being Mitie Technical Facilities Limited. The average size of a bargaining unit has reduced this year to 98 compared to last year's average of 158 and 139 in 2020-21. The proportion of applications involving a bargaining unit of 100 workers or fewer was 70% which is a decrease from last year's figure of 78% but higher than 64% for the year 2020-21. As has been reported previously, the average size of bargaining units has also always been subject to fluctuation. In the past year, it has ranged from 4 to 778 workers. There has been a slight increase in the proportion of applications received from the manufacturing, transport and communications sectors. This year they accounted for 43% of our caseload compared to 41% of the applications received last year and the figure of 26% in 2020-21.

¹ Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, inserted by the Employment Relations Act 1999 and amended by the Employment Relations Act 2004.

In the first stage of the statutory process a panel must decide whether an application should be accepted. In 2022-23, 24 were accepted and five were not.

The proportion of applications accepted was 83%, a minor increase from last year's figure of 81%. In the five cases that were not accepted, the unions in two applications failed to provide sufficient evidence to demonstrate that a majority of workers in the proposed bargaining unit would be likely to favour recognition of the union. In a further two cases, the unions' applications were deemed to be competing applications and were therefore unable to proceed. A summary of these cases can be found later in the report. In the last case, the panel determined that there was already a collective agreement in force for the proposed bargaining unit with another trade union. A summary of this case can also be found later in this report.

There were 20 applications withdrawn at the acceptance stage. Two unions withdrew their applications as they did not provide sufficient evidence to demonstrate that they could meet the majority likely to favour test. Another three unions found that their request letters to the employers were invalid, whilst another union found issues with the description of its proposed bargaining unit. One union submitted two applications but found that there was already a pre-existing collective bargaining agreement in force covering some of the workers in its proposed bargaining units. One union found itself in a similar situation to this due to an existing collective bargaining agreement being in place covering the workers in its proposed bargaining unit, but this agreement was due to end. In another application, the union found that there

were potential issues with the workers in its proposed bargaining unit. One union failed to serve its application on the employer, whilst another wanted to reassess its proposed bargaining unit before proceeding with the application. A further union identified an error in its application and another two unions provided no explanation for their withdrawal. For the remaining five applications, the unions reached voluntary agreements with the employers.

The next stage in the statutory process requires either an agreement between the parties or a decision by the CAC on the appropriate bargaining unit. The number of agreements reached as to the appropriate bargaining unit exceeded the number of cases in which it has been necessary to make a determination. This year there were 19 agreements and six cases requiring decisions. The proportion of bargaining units agreed is 76% which is an increase from last year's figure of 62%. Two applications were withdrawn at this stage as the parties reached a voluntary agreement. This was a decrease from last year's total of six. If a bargaining unit is changed from that originally proposed by the union, whether by agreement or a decision, the CAC is required to decide if the application remains valid. There were seven cases in which the validity of the application had to be determined, which is the same as last year. One union withdrew its application as it reached a voluntary agreement with the employer.

Once a bargaining unit has been agreed or determined, the CAC then has to decide if a union should be awarded recognition without a ballot or whether a ballot should be held. There were 16 cases this year in which recognition was declared without a ballot. Since the statutory recognition provisions were introduced in 2000, there

have been 247 cases in which a union has claimed majority membership in the agreed or determined bargaining unit and the CAC has declared recognition without a ballot in 212 (86%) of these cases. There is one remaining opportunity at this stage before the balloting provisions have been triggered for the parties to reach a voluntary agreement and there were three cases withdrawn at this stage this year. Two of these reached a voluntary agreement and one was withdrawn as the workers in the bargaining unit were relocated resulting in the bargaining unit ceasing to exist. Five ballots were held in cases in which a union did not have majority membership in the bargaining unit. Of these ballots, four were in favour of recognition and one against. The number of ballots resulting in recognition has again increased to 80% which is higher than the historical average of 64%.

The average participation rate in a CAC-commissioned ballot decreased to 66% compared to 76% in the previous year. This figure has been skewed by one ballot which had a very low turnout. No complaints were received that a party had used an unfair practice during the balloting period.

The final stage in the process is for the parties to agree, or, in the absence of any agreement, for the CAC to determine, a method of collective bargaining. As has been reported in previous years, the parties continue to come to an agreement in the overwhelming majority of cases. The figures for 2022-23 were 18 agreements as to the method reached and four decisions were needed. There has been no change in the historical average for a method of collective bargaining being agreed upon. This remains as 91% of the cases that reach this stage of the process.

No applications have been received under Parts II to VI of the Schedule and none were brought forward from 2021-22.

TUR1/1275(2022) RMT and Carlisle Support Services

The union submitted its application to the CAC to be recognised for collective bargaining by the employer. The employer contended that it already had a collective bargaining unit agreement in place covering the workers in the union's proposed bargaining unit with another union, the GMB. When the CAC sought the GMB's views on this as an interested party it was informed by its General Secretary that the agreement was 'null and void' which was the opposite of what the local official had said, and the evidence provided by the employer. Further evidence was received from the GMB in which it explained that the agreement was still current and that it had no intention of being party to a collective agreement for the workers with another union. Having considered all of the evidence the CAC was satisfied that there was a collective bargaining agreement in place between the employer and the GMB. The RMT's application was therefore rejected.

TUR1/1283(2022) TSSA & First Transpennine Express Limited and TUR1/1286(2022) RMT & First Transpennine Express Limited

The TSSA trade union submitted its application to the CAC for recognition for collective bargaining by the employer on 15th July 2022. The employer was given the opportunity to respond to this, leading the CAC, as part of the statutory process, to seek evidence from the union for its membership level in the proposed bargaining unit and whether the majority of the workers supported its application. Having received the

required evidence from the parties the panel was deliberating on whether to accept the application when, on 17th August 2022, it received the application from the RMT trade union for the same proposed bargaining unit. This meant the CAC could not proceed with the TSSA application without having first conducted a membership check on the RMT application in accordance with the legislation. The membership check found that both unions had a membership density of over 10% in the proposed bargaining unit. Paragraph 14(7) of Schedule A1 provides that if the CAC decides that the 10% test is satisfied in respect of more than one (or none) of the relevant applications, the CAC must not accept any of the relevant applications. For this reason, neither application was accepted. It had been 20 years since the CAC received its last set of competing applications.

Disclosure of Information

The CAC received 30 new complaints from trade unions in relation to an employer failing to disclosure information for the purposes of collective bargaining. This provision is under section 183 of the Trade Union and Labour Relations (Consolidation) Act 1992. This was unusually high, and chiefly related to ongoing industrial action that was taking place in the transport sector. Action continued for one complaint that was carried forward from the previous year. Twenty-eight complaints were concluded with only one requiring a formal decision. Three complaints were outstanding at the end of the year. The majority of complaints continue to be resolved through direct negotiations, with the CAC's assistance or through Acas conciliation.

The CAC received its first complaint since its current inception under section 184 of the Trade Union and Labour Relations (Consolidation) Act 1992. This related to an employer failing to comply with an order made by the CAC in its decision dated 6th July 2022. The case was *DI/27(2022) Unite the Union and Fujitsu Services Ltd*. The complainant argued that the employer had not disclosed all of the information as outlined in the CAC's order. The CAC determined that the complaint was not well-founded and the full details of this can be found on the CAC's website in the decision dated 26th January 2023.

The Information and Consultation of Employees Regulations 2004

No complaints were received under these Regulations, and neither were any brought forward from last year.

Requests under Regulation 7

Under the provision Regulation 7, for the establishment of information and consultation arrangements the CAC received no requests from employees. This means since the Regulations came into effect, the total number of requests received remains at 31 under this provision.

The Transnational Information and Consultation of Employees Regulations 1999

The CAC received three fresh complaints under these regulations and continued action on two complaints carried forward from 2021-22. Of these, one complaint was withdrawn, leaving four outstanding cases being carried forward.

Below is a report for one complaint which provides further information on this case which was first mentioned in the Chair's Review.

EWC/41(2022) 2 Sisters Food Group

There had been a complaint to the CAC in 2017 under Regulation 20 of the Transnational Information and Consultation of Employees Regulations (TICER) 1999 as amended relating to the employer's failure to establish an EWC in accordance with the provisions of the Schedule to the Regulations. The employer responded in essence that it was concerned that an EWC would not deliver value to the employer or employee representatives but that it had never refused to commence negotiations. It agreed to set up an EWC in accordance with the Schedule and the complaint was withdrawn in May 2017. The employer did not establish an EWC and nothing further happened on this matter until March 2022 when a new officer within Unite the Union asked for the EWC to be established. The employer said that this was no longer possible under the Regulations.

A fresh complaint was submitted to the CAC in October 2022 under TICER as amended by The Employment Rights (Amendment) (EU Exit) Regulations. The complainant's principal argument was that the provisions of the Schedule applied as of January 2016 because the employer had refused to commence negotiations within six months of the request in July 2015. The employer maintained that 'refusal' in this context meant actual refusal and that no refusal could be implied from conduct. The complainant said that the six-month deadline would be valueless if the employer could keep saying it was not explicitly refusing to negotiate. The panel accepted that 'refusal' in this context could not be equated with mere 'failure' to commence negotiations but found, after considering all the evidence, that the employer's inaction had been tantamount

to a refusal. The panel rejected the employer's arguments that a time limit should be implied in Regulation 20 and that the claim was an abuse of process.

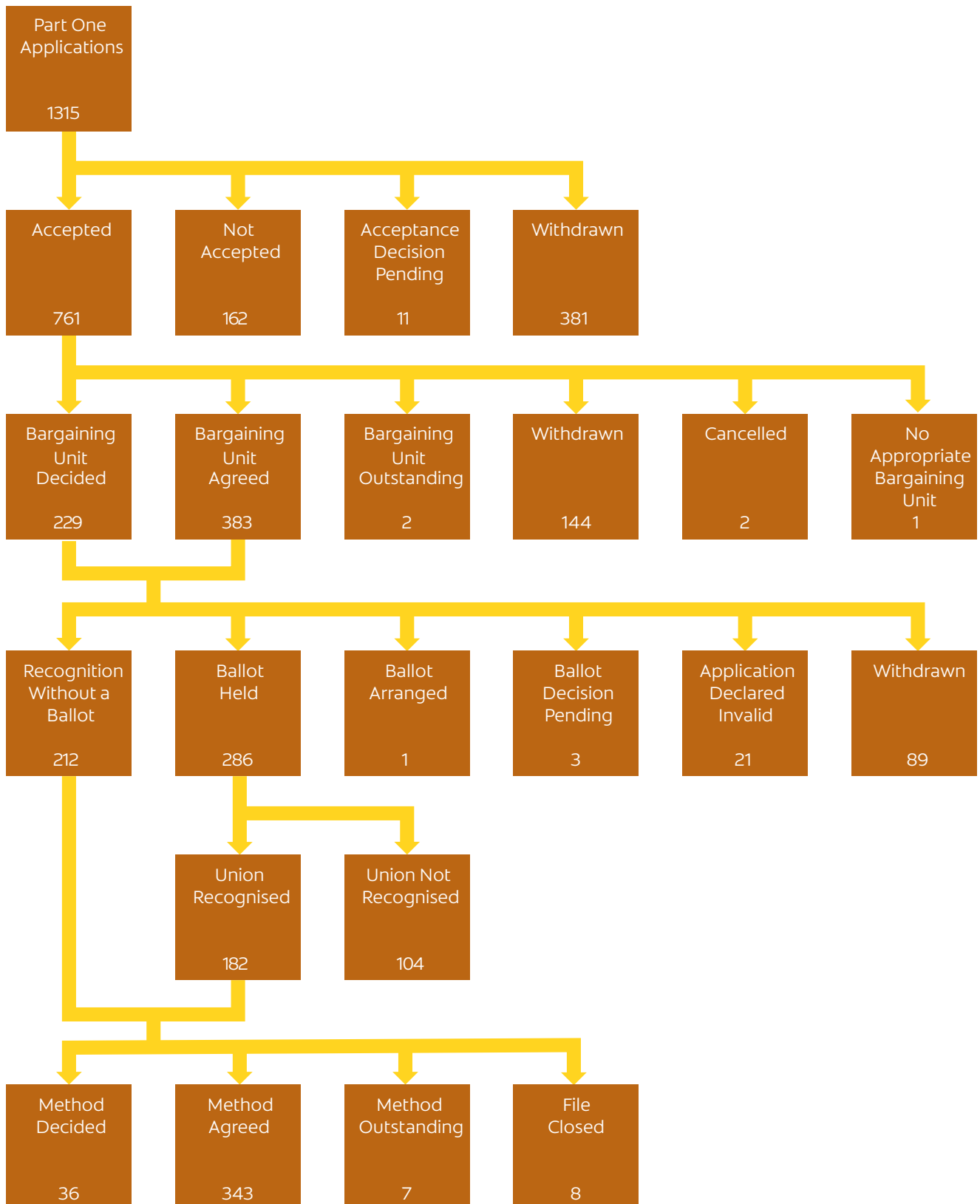
The complainant sought an order against the employer under regulation 20(4). The employer strongly opposed this. The panel considered that there were good grounds for making an order to avoid further delay but thought that in the interests of good industrial relations, it may be better served by giving the employer the opportunity to comply with its legal obligations in the absence of this. The panel left it open, giving the complainant the option to return to the CAC to request an order if the employer failed to take steps to establish an EWC under the provisions of the Schedule. Following this, the employer lodged an appeal to the EAT on this decision dated 25th January 2023. The full decision can be found on the CAC's website.

**The European Public
Limited-Liability Company
(Employee Involvement)
(Great Britain) Regulations 2009**

No applications were received under the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009.



Progress chart of applications for recognition





The CAC's Aims

Our role is to promote fair and efficient arrangements in the workplace, by resolving collective disputes (in England, Scotland and Wales) either by voluntary agreement or, if necessary, through adjudication. The areas of dispute with which the CAC currently deals are:

- i. applications for the statutory recognition and derecognition of trade unions;
- ii. applications for the disclosure of information for collective bargaining;
- iii. applications and complaints under the Information and Consultation Regulations;
- iv. disputes over the establishment and operation of European Works Councils;
- v. complaints under the employee involvement provisions of regulations enacting legislation relating to European companies, where the provisions will continue to be applicable from 1 January 2021 to the UK Societas domestic framework.

The CAC and its predecessors have also provided voluntary arbitration in collective disputes. This role has not been used for some years.



Our objectives are:

1. To achieve outcomes which are practicable, lawful, impartial, and where possible voluntary.
2. To give a courteous and helpful service to all who approach us.
3. To provide an efficient service, and to supply assistance and decisions as rapidly as is consistent with good standards of accuracy and thoroughness.
4. To provide good value for money to the taxpayer, through effective corporate governance and internal controls.
5. To develop a CAC secretariat with the skills, knowledge and experience to meet operational objectives, valuing diversity and maintaining future capability.

Our performance measures and targets based on these objectives are:

- Proportion of applications for which notice of receipt is given and responses sought within one working day
Target: 95% – *achieved 95%.*
- Proportion of users expressing satisfaction with administration and conduct of the case and/or the procedural guidance provided to them
Target: 85% – *100% of those who responded to the customer survey, which is sent to all users, rated their level of satisfaction as good or very good.*
- Proportion of written enquiries and complaints responded to within three working days
Target: 90% – *The CAC received 154 enquiries in writing or by e-mail and we responded to 100% within this timescale.*
- Proportion of Freedom of Information requests replied to within the statutory 20 working days

There were 7 requests in 2022-23. All requests related to information which fell within Acas' sphere of responsibility. Replies to all requests were provided within the statutory timescale.

User Satisfaction

If you are asked for your views on any aspect of our service, we would appreciate your co-operation. But if you have comments, whether of satisfaction, complaint or suggestion, please do not wait to be asked. If you are dissatisfied with any aspect of our service, please let us know so that we can put things right. If you cannot resolve your problem with the person who dealt with you originally, please ask to speak to their manager or, if necessary, the Chief Executive who will investigate your complaint. If you wish to complain in writing, please write to:

Maverlie Tavares
Chief Executive
Central Arbitration Committee
PO Box 78137
London
SW1P 9XE

In the event of any complaint, we hope that you will let us try to put things right. But if necessary, you can write to your MP, who can tell you how to have your complaint referred to the Parliamentary and Health Service Ombudsman.



Appendix i

Analysis of References to the Committee: 1 April 2022 to 31 March 2023

Jurisdiction	Brought forward from 31 March 2022	Received between 1 April 2022 & 31 March 2023	References completed or withdrawn	References outstanding at 31 March 2023
Trade Union and Labour Relations (Consolidation) Act 1992:				
VOLUNTARY ARBITRATION s212	-	-	-	-
DISCLOSURE OF INFORMATION s183	1	30	28	3
TRADE UNION RECOGNITION				
Schedule A1 – Part One	25	53	54	24
Schedule A1 – Part Two	-	-	-	-
Schedule A1 – Part Three	-	-	-	-
Schedule A1 – Part Four	-	-	-	-
Schedule A1 – Part Five	-	-	-	-
Schedule A1 – Part Six	-	-	-	-
The Transnational Information and Consultation of Employees Regulations 1999:	2	3	1	4
The European Public Limited-Liability Company (Employee Involvement)(Great Britain) Regulations 2009:	-	-	-	-
The Information and Consultation of Employees Regulations 2004:	-	-	-	-
Total:	28	86	83	31



Appendix ii

CAC Resources and Finance: 1 April 2022 to 31 March 2023

CAC Committee

Committee Members		38
Of which	Chair and Deputy Chairs	9
	Employer and Worker Members	29

CAC Secretariat

Secretariat staff	9
Committee fees, salary costs and casework expenses	£582,909

Other Expenditure

Accommodation and related costs	£53,972
Other costs	£30,922
Total CAC expenditure from 1 April 2022 to 31 March 2023	£667,803

CAC Expenditure

The CAC's overall expenditure has increased due to accommodation and related costs and the costs associated with managing cases.

Acas, which provides the CAC with its resources, also apportions to the CAC budget the costs of depreciation and shared services. That apportionment is not included in the above figures but will be included in the Acas Annual Report and Accounts for 2022-23.



Appendix iii

CAC Staff at 31 March 2023 and Contact Details

Chief Executive

Maverlie Tavares

Operations Manager

Bola Olayinka

Operations Manager

Kate Norgate

Senior Case Manager

Nigel Cookson

Case Managers

Kaniza Bibi

Joanne Curtis

Content Creator

Caroline Griffiths

Finance Supervisor & Assistant
Case Manager

Laura Leumont

Finance & Case Support Officer

Emma Bentley

Central Arbitration Committee
PO Box 78137
London
SW1P 9XE

Telephone: 0330 109 3610
E Mail: enquiries@cac.gov.uk
Web Site: <https://www.gov.uk/cac>



**CENTRAL
ARBITRATION
COMMITTEE**



PO Box 78137 London SW1P 9XE

T: 0330 109 3610

E: enquiries@cac.gov.uk

<https://www.gov.uk/cac>